

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

RICHARD A. O'FALLON

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3762

Decision No. CU - 5024

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was opened by the Commission on behalf of RICHARD A. O'FALLON. He thereafter presented claim for \$20,420.00 based upon the asserted ownership and loss of certain real and personal property in Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant describes his loss as follows:

Improved real property in Santiago	\$ 9,000.00
Farm equipment, household furnishings and other personalty	<u>11,420.00</u>
	\$20,420.00

Based upon the entire record, including an affidavit from an individual who knew claimant and visited him on the farm and an affidavit from claimant listing his real and personal property in Cuba, the Commission finds that claimant owned the real and personal property subject of this claim. The record reflects that he purchased the property in 1943 and married his present wife in 1946.

On December 6, 1961, the Cuban Government published its Law 989 which confiscated all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who left the country.

Claimant states that he left Cuba in December, 1967 and that when his wife, a Cuban national, left in April, 1968, the Government of Cuba took possession of the property.

The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property was taken by the Government of Cuba on January 15, 1967 pursuant to the provisions of Law 989 (see Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiam. Rep. 53 [July-Dec. 1966]), although claimant or his wife remained in possession for a while thereafter.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property

and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The record includes, in support of the claimed values the aforementioned affidavits, a description of the house on the farm as constructed of concrete and mortar with mosaic tile floors having about 7 rooms and located on a farm of about 77,000 square meters purchased in 1943. Claimant states that on the farm there were also a house for employees, a guest house, a sanitary house and 2 garages; water wells and pumps, a tractor and over 170 fruit trees and plants. The record also includes an itemized list of household furnishings, farm equipment, and other personalty.

Based on the entire record, the Commission finds that on the date of loss, the improved real property including the fruit trees and plants and other improvements had a value of \$11,095.00 and that the household furnishings, farm equipment and other personalty had a total value of \$7,764.00.

Accordingly, the Commission concludes that claimant suffered a loss in the total amount of \$18,859.00 within the meaning of Title V of the Act as a result of the taking of his real and personal property by the Government of Cuba on January 15, 1967.

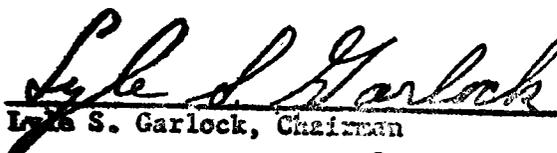
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that RICHARD A. O'FALLON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighteen Thousand Eight Hundred Fifty-Nine Dollars (\$18,859.00) with interest at 6% per annum from January 15, 1967 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

SEP 9 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)